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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/883,867	06/18/2001	Glenn Hogle	1161-1.CIP	3059

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ROGITZ & ASSOCIATES  
750 B STREET  
SUITE 3120  
SAN DIEGO, CA 92101

[REDACTED] EXAMINER

NGUYEN, ANTHONY H

[REDACTED] ART UNIT [REDACTED] PAPER NUMBER

2854

DATE MAILED: 01/30/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

75

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/883,867	HOGLE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Anthony H Nguyen	2854

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 12 November 2002.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-31 is/are pending in the application.

4a) Of the above claim(s) 1-13 and 25-31 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 14-24 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ .
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>5 &amp; 6</u> .	6) <input type="checkbox"/> Other: _____

Applicant's election of Group II (Claims 14-24) in Paper No. 8 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Accordingly, claims 1-13 and 25-31 are withdrawn from further consideration by the examiner, 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

The disclosure is objected to because the reference numerals "68" and "48b" (specification, pages 8 and 9) cannot be found in any drawings. Appropriate correction is required.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-16, and 21-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 20-37 of copending Application No. 09/521,581. Although the conflicting claims are not identical, they are not patentably distinct from each other because the referenced copending application and the instant application are claiming common subject matter with different broader claim language.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 17 and 18 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-37 of copending Application No. 09/521,581 (the application '581) in view of Brown (US 5,806,115).

The application '581 fails to teach a controller connected to a pump for activating the pump. However, Brown teaches an adjustable position control system having a controller 23 connected to a pump 22 to energize or de-energize the pump (Brown, Fig.31). In view of the teaching of Brown, it would have been obvious to one of ordinary skill in the art to modify the

support platform of the application '581 by providing the controller as taught by Brown for more precise control the position of a keyboard during typing.

Claims 19 and 20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 20-37 of copending Application No. 09/521,581 in view of VanderHeide et al. (US 6,409,127).

The application '581 fails to teach the articulated arm which supports the platform. However, VanderHeide et al. teaches an adjustable keyboard support mechanism having an articulated arm 18 extending from a deck 14 and attaching to a keyboard support platform 30 as shown in Fig.10 VanderHeide et al. Therefore, in view of the teaching of VanderHeide et al., it would have been obvious to one of ordinary skill in the art to modify the support platform of the application '581 by securing the support platform to the articulated arm connected to a deck for optimum typing speed on a keyboard.

This is a provisional obviousness-type double patenting rejection.

### *Conclusion*

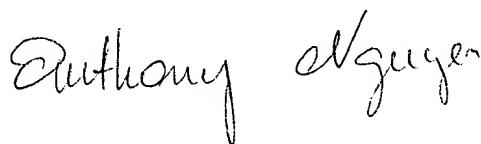
The patents to Peart, and Barber et al. are cited to show other structures having obvious similarities to the claimed structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Nguyen whose telephone number is (703) 308-2869. The examiner can normally be reached daily from 9 AM to 5PM.

Art Unit: 2854

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew Hirshfeld, can be reached on (703) 305-6619. The fax phone number for this Group is (703) 308-7722.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-0956.



Anthony Nguyen  
1/22/03  
Patent Examiner  
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